



County of San Bernardino

F A S

STANDARD CONTRACT

FIFTH AMENDMENT

FOR COUNTY USE ONLY

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|---|---------------------|----------------------------|--|-------------------------------|--------------------------------------|-----------------|
| <input type="checkbox"/> New <input checked="" type="checkbox"/> Change <input type="checkbox"/> Cancel | Vendor Code | SC | Dept. | A | Contract Number 88-570 A-5 | |
| County Department Real Estate Services | | | Dept. | Orgn. | Contractor's License No. | |
| County Department Contract Representative David H. Slaughter, Director | | | Telephone 387-7813 | | Total Contract Amount | |
| Contract Type <input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other: | | | | | | |
| If not encumbered or revenue contract type, provide reason: | | | | | | |
| Commodity Code | | Contract Start Date | | Contract End Date | | Original Amount |
| Fund AAA | Dept. RNT | Organization RNT | Appr. | Obj/Rev Source 2905 | GRC/PROJ/JOB No. N30121 | Amount |
| Fund | Dept. | Organization | Appr. | Obj/Rev Source | GRC/PROJ/JOB No. | Amount |
| Fund | Dept. | Organization | Appr. | Obj/Rev Source | GRC/PROJ/JOB No. | Amount |
| Project Name San Bdno - CSD | | | Estimated Payment Total by Fiscal Year | | | |
| | | | FY | Amount | I/D | |
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THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, hereinafter called the County, and

Name

Don W. Schmid Family Trust, et al

hereinafter called LANDLORD

Address

440 West Fifth Street, Suite 201

Tustin, CA 92780

Telephone

(714) 544-4000

Federal ID No. or Social Security No.

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

This amendment of lease consists of a lease extension and Assignment, Consent to Assignment of Lease, and Mutual Release of Liability Agreement ("Amendment") is made between Don W. Schmid, Trustee of the Don W. Schmid Family Trust, established October 8, 1984, David W. Schmid and Jennifer N. Schmid, Trustees of the 2001 David W. Schmid Trust, dated November 27, 2001, David W. Schmid, Trustee of the Daniel Walter Schmid Trust, established March 10, 1997, David W. Schmid, Trustee of the William Robert Schmid Trust, established December 30, 1998, David W. Schmid, Trustee of the Andrew David Schmid Trust, established February 6, 2001, David W. Schmid and Jennifer N. Schmid, Trustee of 2001 David Schmid Trust dated November 28, 2001, Laura M. Cook, Trustee of the Laura M. Cook Trust, established August 9, 1996, and Mark D. McCormick and Bonnie S. McCormick, Trustees of the M & B McCormick Trust established January 30, 1997, Bonnie Jean McCormick, Trustee of the David Walter McCormick Trust, established July 29, 1991, Bonnie Jean McCormick, Trustee of the Matthew Thomas McCormick Trust established July 29, 1991, Bonnie Jean McCormick, Trustee of the Michael McCormick Trust established July 29, 1991 ("LANDLORD"), whose address is 440 W. First Street, Suite 201,

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Tustin, California, and County of San Bernardino ("COUNTY"), whose address is Real Estate Services Department, 825 East Third Street, San Bernardino, California 92415-0832; and Community Services Department of San Bernardino ("CSDSB"), 686 East Mill Street, San Bernardino, California 92408, and who agree as follows:

1. Recitals. This Amendment is made with reference to the following facts and objectives:
- a. COUNTY, as tenant, and LANDLORD's predecessor, Richard J. Battaglia ("Landlord"), entered into a written lease, County Contract No. 89-570 on July 18, 1988 ("Lease") by which Landlord leased to COUNTY and COUNTY leased from Landlord premises located at 686 East Mill Street, San Bernardino, California ("Premises"). The Premises were leased for COUNTY business, and during the lease term, have been utilized as office space by CSDSB.
- b. Effective July 1, 2003, CSDSB will be transitioned to a non-profit corporation under the same name but which is separate and distinct from the COUNTY, and designated the Community Action Agency for the County of San Bernardino.
- c. The Lease was amended on _____, to reflect the Landlord's name change from Richard J. Battaglia to Battaglia to Don W. Schmid, Trustee of the Don W. Schmid Family Trust, established October 8, 1984, David W. Schmid and Jennifer N. Schmid, Trustees of the 2001 David W. Schmid Trust, dated November 27, 2001, David W. Schmid, Trustee of the Daniel Walter Schmid Trust, established March 10, 1997, David W. Schmid, Trustee of the William Robert Schmid Trust, established December 30, 1998, David W. Schmid, Trustee of the Andrew David Schmid Trust, established February 6, 2001, David W. Schmid and Jennifer N. Schmid, Trustee of 2001 David Schmid Trust dated November 28, 2001, Laura M. Cook, Trustee of the Laura M. Cook Trust, established August 9, 1996, and Mark D. McCormick and Bonnie S. McCormick, Trustees of the M & B McCormick Trust established January 30, 1997, Bonnie Jean McCormick, Trustee of the David Walter McCormick Trust, established July 29, 1991, Bonnie Jean McCormick, Trustee of the Matthew Thomas McCormick Trust established July 29, 1991, Bonnie Jean McCormick, Trustee of the Michael McCormick Trust established July 29, 1991, and to extend the Lease from August 1, 1988, through July 31, 2001.
- d. On February 12, 2002, the Lease was amended to reflect the COUNTY's exercise of the first of three two-year (2-year) options in the Lease extending the lease term from August 1, 2001, through July 31, 2003.
- e. COUNTY now desires to exercise the second two-year (2-year) option to extend the lease term from August 1, 2003, through July 31, 2005.
- f. Effective August 1, 2003 through July 31, 2004, the monthly payment will be Thirteen Thousand Three Hundred Eighty-six and 00/100 Dollars (\$13,386.00 - \$./sq.ft./full service) and effective August 1, 2004 through July 31, 2005, the monthly payment will be Thirteen Thousand Seven Hundred Twenty-one and 00/100 Dollars (\$13,721.00 - \$./sq.ft./full service).
- g. COUNTY now also desires to assign its right, title, and interest in the Lease to CSDSB to be effective on July 1, 2003.

h. Consistent with the assignment, COUNTY now desires to be released from all potential liability under the Lease effective July 1, 2003.

i. LANDLORD now desires to be released from potential liability under the Lease to COUNTY effective July 1, 2003.

2. Landlord's Consent. LANDLORD consents to the proposed assignment and releases COUNTY from any further rights, duties, and obligations under the Lease as of July 1, 2003, except to the extent of any rights, duties, and obligations which arise prior to July 1, 2003.

3. Effective Date of Assignment. The assignment consented in this Amendment takes effect on July 1, 2003, and COUNTY will give possession of the Premises to CSDSB on that date.

4. Assignment and Assumption. COUNTY assigns and transfers to CSDSB all of COUNTY's right, title, and interest in Lease, and CSDSB accepts the assignment and hereby assumes and agrees to timely perform, from the date the assignment becomes effective July 1, 2003, as a direct obligation to LANDLORD, all of COUNTY's obligations under the provisions of the Lease, including but not limited to paying monthly rent.

5. No Waiver. LANDLORD's consent to the assignment is without waiver of the Lease's restriction concerning further assignment or subleasing without the LANDLORD's consent.

6. Liability. Effective July 1, 2003, COUNTY will not have any rights, duties or obligations and will not remain liable for the performance of the provisions of the Lease and any option contained in the Lease or hereafter provided.

7. Prepaid Rent and Security Deposit. The parties acknowledge that LANDLORD now holds no prepaid rent, security deposit or any other sums to be applied subject to the provisions of the Lease.

8. Indemnification for Lease. CSDSB agrees to indemnify, defend with counsel approved by COUNTY and hold harmless the COUNTY and its authorized officers, employees, agents, and volunteers from any and all claims, demands, actions, losses, damages, liability, and/or any costs or expenses incurred by COUNTY arising out of the assignment of the Lease from any cause whatsoever, including the acts, errors or omissions of any person, except where such indemnification is prohibited by law. CSDSB's indemnification obligation applies to the COUNTY's "active" as well as "passive" negligence, but does not apply to the COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. CSDSB's indemnification obligation shall survive its tenancy.

9. Releases.

a. LANDLORD, COUNTY, and CSDSB on behalf of themselves, their supervisors, elected officials, parent, subsidiary, affiliates, descendants, ancestors, dependents, heirs, executors, administrators, assigns, agents, servants, officers, directors, stockholders, employees, representatives, attorneys, and successors hereby release and discharge the other and their supervisors, elected officials, parent, subsidiary, affiliates, descendants, ancestors, dependents, heirs, executors, administrators, assigns, agents, servants, officers, directors, stockholders, employees, representatives, attorneys, and successors from all rights, claims and actions (except unpaid taxes) which each party and his or her above-mentioned related or associated persons and/or entitles now have against the

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other party and his above- mentioned related or associated persons and/or entities, arising from the Lease. The above parties hereto agree and recognize that this Amendment fully and finally settles and forever resolves all disputes, actions and claims which they have, may have, have had or may have had against the persons and/or entitles released arising out of the Lease. Further, it is expressly understood that this Amendment is intended to, and does cover and release claims relating to any aforesaid matters which may not have arisen or come into being, as it is the intent of the above parties hereto that the persons released and entities released shall have no liability or obligations to the other with respect to said Lease, now or ever, except for the parties' obligations as provided for herein.

b. All of the above-mentioned parties to this Amendment, notwithstanding the application of Section 1542 of the California Civil Code, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of the executed release which if known by him or her must have materially affected his or her settlement with the debtor." expressly waive and relinquish all rights and benefits afforded them by said Section 1542, and any and all similar laws of any state or territory of the United States. This Amendment shall act as a release of future claims that may arise from the above-mentioned Lease whether such claims are currently known, unknown, foreseen, or unforeseen. The parties understand and acknowledge the significance and consequences such specific waiver of Section 1542 and hereby assume full responsibility for any injuries, damages, losses, or liability that they may hereafter incur from the above-mentioned Lease.

10. Miscellaneous.

a. Jury Trial Waiver. LANDLORD, COUNTY, and CSDSB hereby waive their respective right to trial by jury for any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by any party(ies) against any other party(ies) on any matter whatsoever arising out of, or in any way connected with, the Lease, this Amendment, the relationship of the parties, any party's use of occupancy of the Premises or any part of it, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

b. Notice. Any notice, demand, request, consent, approval, or communication that either party desires, or is required to give to the other party or any other person under this Amendment, shall be in writing and either served personally or sent by prepaid, first-class mail. Any notice, demand, request, consent, approval, or communication that either party desires, or is required to give to the other party, shall be addressed to the other party at the address set forth in the introductory paragraph of this Amendment. Any party may change its address by notifying the other parties of the change of address. Notice shall be deemed communicated within two (2) County working days from the time of mailing, if mailed as provided in this paragraph.

c. Successors. This assignment shall be binding on and inure to the benefit of the parties and their successors.

d. Warranties. The parties hereto expressly warrant, represent, and agree that:

(1) They have had the opportunity to receive independent legal advice from attorneys concerning the legal ramifications of this Amendment;

(2) That the parties are not relying upon any representation or statement by or on behalf of any of the persons or entities released with respect to any aspect of this Amendment;

(3) That the parties assume the risk of any mistake of fact and/or with regard to any aspect of this Amendment; and

(4) The parties specifically represent and warrant to the persons released that neither they nor any director, officer, employee, servant, agent, representative, attorney, parent, subsidiary or affiliate, or any other person or entity under the management or control of the parties, hereto have filed or will file any claim, lien, arbitration, or lawsuit of any kind against the parties or their agents, their representatives, or their property hereto or against any of the persons released in a foreign, federal, state, or local tribunal of any kind, or administrative body for any act or omission occurring prior to the date of this Amendment involving said Lease and the facts thereto.

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11. All other provisions and terms of the Lease Agreement, Contract No. 89-570, as previously amended, shall remain the same and are hereby incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be hereunto subscribed by their respective proper officers hereto duly authorized.

END OF THIRD AMENDMENT.

COUNTY OF SAN BERNARDINO

COMMUNITY SERVICES DEPARTMENT

By: _____
Dennis Hansberger, Chairman
Board of Supervisors

By: _____
(Name)

(Title)

Dated: _____

Dated: _____

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN
DELIVERED TO THE CHAIRMAN OF
THE BOARD

J. RENEE BASTIAN, Clerk of the
Board of Supervisors

By _____
Deputy

Date: _____

LANDLORD: Don W. Schmid family Trust, est.
10/8/84; 2001 David W. Schmid Trust, dated
11/27/01 and 11/28/01; Daniel Walter Schmid Trust,
est. /10/97; William Robert Schmid Trust, est.
12/30/98; Andrew David Schmid Trust, est. 2/6/01;
Laura M. Cook Trust, est. 8/9/96; M & B
McCormick Trust est. 1/30/97; David Walter
McCormick Trust, est. 7/29/91; Matthew Thomas
McCormick Trust, est. 7/29/91; Michael McCormick
Trust est. 7/29/91

By: _____
Greenwood & Sons, a General
Partnership Manager

By: _____
Carl J. Greenwood, Managing General
Partnership

Dated: _____

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| Approved as to Legal Form | Reviewed by Contract Compliance | Presented to BOS for Signature |
| ► Fiona Luke, Deputy County Counsel | ► _____ | ► Department Head |
| Date _____ | Date _____ | Date _____ |

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